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## Immigration Authorities Step Up Actions Against Unauthorized Workers

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Photo by Aaron Logan

If you're a business owner or HR manager, the federal government has a message for you: Don't hire illegal workers—and make sure you have a process in place to prevent hiring them. If not, US Immigration & Customs Enforcement is coming for you.

The agency, which conducts audits and raids to ensure businesses are only hiring legal workers, has stepped up enforcement efforts in recent years.

According to the Associated Press, in fiscal year 2011 ICE audited 2,496 companies, a 14 percent increase from 2010. And since 2008, it's nearly tripled the number of workforce enforcement cases from 1,191 in 2008 to 3,291 this fiscal year.

A sampling of recent high-profile cases:

- American Apparel (which markets its made-in-the-US culture) lost 10% of its workforce in 2009 —or about 1,500 people—after being raided.
- Following a January 2011 audit, Chipotle Mexican Grill lost several hundred employees
- A Missouri-based plant owned by Howard Industries was raided in August 2008. Almost 500 employees
  were arrested and later deported. In addition, the HR manager pled guilty to charges of fraud and was
  sentenced to six months of house arrest. The company was fined \$2.5 million.
- In September 2010, clothing retailer Abercrombie & Fitch was fined more than \$1 million because of shortcomings in its employment verification process—even though there were no known instances of the company hiring authorized workers.



ICE boasts of its workplace crackdowns—and offers a host of other examples—on its website.

"Over the last 2-3 years, it is clear the government has placed a new emphasis on enforcing

the provisions outlined in the Immigration Reform and Control Act of 1986," says immigration lawyer Andrew Wilson, a partner at Serotte Reich Wilson, LLP. "The government is looking to mete out punishment for illegal workers, and employers may be the easiest target. Based on the unlikelihood that Congress will address immigration reform, increased enforcement and penalties against employers will play an even larger role in the fight against illegal workers in the US."



Andrew Wilsor

## **Employers: What You Need to Know**

Every US employer must have new employees complete Form I-9 (aka the Employment Eligibility Verification form), which is available from the Department of Homeland Security's US Citizenship & Immigration Services.

According to the Department of Homeland Security, "The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States."

The form must be filled out on or before an employee's first day of work and asks the individual to document whether they are a US citizen, a lawful permanent resident, an alien who's authorized to work or a noncitizen national of the US (which includes, for example, people born in American Samoa).

The employer must then examine the proof supplied by the employee to confirm their identity and eligibility to work. Employers are required to keep the completed I-9 forms on file for at least 3 years after an employee is hired or one year after they're terminated, whichever is longer.

The US government also offers a program known as E-Verify, which is optional for many companies, though participation is mandatory for some.

E-Verify is a companion program to the I-9 form that's offered by US Citizenship & Immigration Services. Because the I-9 form requires the employer to use their personal judgment in determining a document's authenticity, after an employee has completed the I-9 form, the employer can enter the information into E-Verify. The system analyzes the information, then notifies the employer whether the individual is authorized to work in the US, if there's been a mismatch (meaning the information can't be confirmed) or if the government needs more time to investigate before making a determination.

While the I-9 form and E-Verify can help companies confirm that a new hire is eligible for employment, it's not foolproof. There's still potential for fraud, and E-Verify can have a tough time catching the fraud, particularly if the employer is the one committing it. That's what caused so much trouble for Howard Industries: an HR manager was involved in the crime.



## **Catching the Criminals**

ICE conducts several types of enforcement activities, including silent raids—where a company's I-9 records are audited—as well as the high-profile raids that more commonly make the news.

Before conducting an audit, a company receives some advance notice. In June, the administration notified about 1,000 companies that they'd be audited.

According to CNN, the current round of audits targets industries key to U.S. domestic security, "including agriculture, banking, energy, information technology, health care and transportation systems."

Raided companies face fines, criminal charges and even prison time for key executives if they're found to be out of compliance, whether through poor recordkeeping or if they hired people ineligible to work. Individual employees who are working illegally can be arrested, charged with crimes including fraud and identity theft, jailed and even deported.

"The I-9 audit process has become the preferred method of enforcement over worksite raids," Wilson says. "It's imperative that employers establish proper I-9 procedures, regularly scheduled self-audits and consistent practices for I-9 corrections. Properly conducted self-audits can help reduce potential liabilities and negative publicity."

Jennifer E. King co-authors the Lawyers.com blog.

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